

**To:** Horwitz, Sylvia[Horwitz.Sylvia@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]  
**From:** Neugeboren, Steven  
**Sent:** Mon 3/23/2015 9:55:34 PM  
**Subject:** RE: Changes to West Virginia's NPDES Program

thanks. All this is very helpful.

**From:** Horwitz, Sylvia  
**Sent:** Monday, March 23, 2015 5:33 PM  
**To:** Neugeboren, Steven; Srinivasan, Gautam  
**Subject:** RE: Changes to West Virginia's NPDES Program

Below is the email you forwarded to me with Avi's response to Jim Hecker on Thurs. March 19.  
A little background:

SB 166/HB2283: contains a provision that states that "the legislative rule filed in the State Register on July 28, 2014, . . . is authorized.

SB 357: Article II contains language that the Public Justice letter signatories find problematic, including: "While [NPDES] permits shall contain conditions that are designed to meet all applicable state and federal water quality standards and effluent limitations, water quality standards themselves shall not be incorporated wholesale either expressly or by reference as effluent standards or limitations in a permit issued pursuant to this article." (§22-11-8(a)).

SB 357, Article II : also contains the following in §22-11-6(2): For purposes of both this article and section 309 and 505 of the [CWA], compliance with a permit issued pursuant to this article shall be deemed compliance for purposes of both this article and sections 301, 302, 303, 306 407, and 403 of the [CWA] and will all applicable state and federal water quality standards, except for any such standard imposed under section 307 of the [CWA] for a toxic pollutant injurious to human health. Notwithstanding any provision of this code or rule or permit condition to the contrary, water quality standards themselves shall not be considered 'effluent standards or limitations' for the purposes of both this article and section 309 and 505 of the [CWA] and shall not be independently or directly enforced or implemented except through the development of terms and conditions of a permit issued pursuant to this article. . . ."



Sylvia Horwitz

Office of General Counsel

Water Law Office

WJC North 7353H

Phone: 202-564-5511

**From:** Neugeboren, Steven

**Sent:** Thursday, March 19, 2015 5:23 PM

**To:** Horwitz, Sylvia; Srinivasan, Gautam

**Subject:** FW: Changes to West Virginia's NPDES Program

Here is avi's response. Left you a vmail

**From:** Garbow, Avi

**Sent:** Thursday, March 19, 2015 5:21 PM

**To:** Jim Hecker

**Cc:** Neugeboren, Steven

**Subject:** RE: Changes to West Virginia's NPDES Program

Jim,

Thank you for the letter and follow-up email. I have read the letter, and we are in the process of determining whether we can arrange a meeting, and if so, who the best participants would be from the Agency. I expect we will get back to you shortly.

Regards,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

**From:** Jim Hecker [<mailto:JHecker@publicjustice.net>]

**Sent:** Wednesday, March 18, 2015 10:22 AM

**To:** Garbow, Avi

**Subject:** Changes to West Virginia's NPDES Program

Dear Mr. Garbow:

I hope you have had a chance to review the attached letter we sent to you last month about the changes to West Virginia's NPDES program in SB 166 and SB 357.

The relevant provisions of SB 166 were enacted as HB 2283 (pp. 4-5), which was passed by the Legislature on March 12 and became effective on that date. SB 357 was signed by the Governor on March 12 and will become effective on June 1, 2015. The final version of that bill provides that water quality standards "shall not be considered 'effluent standards or limitations' for the purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act and shall not be independently or directly enforced or implemented except through the development of terms and conditions of a permit issued pursuant to this article." SB 357, p. 20. It also provides that "water quality standards themselves shall not be incorporated wholesale either expressly or by reference as effluent standards or limitations in a permit issued pursuant to

this article.” Id. at 22.

Would it be possible to meet with you to discuss these changes?

Jim Hecker

Public Justice

1825 K Street, NW Suite 200

Washington, D.C. 20006

(202) 797-8600 ext. 225

fax (202) 232-7203

[jhecker@publicjustice.net](mailto:jhecker@publicjustice.net)